which promised to be beneficial to both the defendant and the plaintiff as well as to the defendant's son.

The plaintiff has expended money over and above the $1,300 which he paid to the defendant, in making extensions to his house and perhaps in helping to fill up the swampy land behind No. 19 with earth. The probabilities are that when the defendant needed money for his project he originally intended that the contribution of $1,300 made by the plaintiff in February 1959 should go towards making him entitled to a life interest in at least one house, no detailed specifications having been supplied to him by the plaintiff. This is probably why he has permitted the plaintiff to occupy No. 19-D from June 1959.

The plaintiff was not in dire need of accommodation as the defendant now claims. The house which he formerly occupied in Geylang Serai still exists and has not been demolished as suggested by the defence. I find that the plaintiff intended that his contribution of $1,300 should be utilised for the purpose of having a house, which he could call his own, built for him as his residence on a more permanent basis. I am satisfied that the $15 per month which he actually paid to the defendant was paid as his contribution towards water and light and not as part of any rent payable by him.

I am not prepared to believe that in its inception this contribution was merely a loan to be discharged from subsequent rents having regard to the fact that the defendant has allowed him to stay without claiming any rent for some considerable time after the $1,395 is alleged to have fully repaid at "deductions" of $15 per month.

Having regard to the principle enunciated in *Inwards* v. *Baker*[1] I find that the plaintiff has established his claim at least to a life interest in No. 19-D. The defendant, however, all along refused to let him occupy No. 19-E. The plaintiff never did anything about claiming No. 19-E for several years until the defendant commenced proceedings against him in respect of No. 19-D in the Civil District Court. As I have said the plaintiff has produced no documentary or other evidence in support of his claim to ownership of both houses. I have decided on the probabilities and in the light of the principle in the *Inwards* case that he has established a claim to a life interest in No. 19-D only. He was allotted No. 19-D as his share in the whole building project of the defendant. Even the defendant had no documentary evidence such as counterfoils of rent receipts to show that he merely rented No. 19-D to the plaintiff. As for No. 19-E, the defendant's refusal to allow the plaintiff occupation is consistent with his refusal to recognise that the plaintiff had any entitlement to it either as owner or as tenant, which I accept. In my judgment, the defendant was more than justified in allocating No 19-D to him as his share and no more.

There will be a declaration that the plaintiff is entitled to remain in the house known as No. 19-D Jalan Ladang, Singapore as his home for life or for as long as he wishes it to be his home, but subject to payment of water and electricity dues.

The remaining prayers fail but, in all the circumstances, it seems fair to me that I should award him only half of his taxed costs.

Judgment will be entered accordingly.

*Judgment accordingly.*

Solicitor: *M. Gunaratnam & Co.; Boswell, Hsieh & Lim.*

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## TAN LIAT HONG v. PUBLIC PROSECUTOR

**[A.Cr.J. (Winslow J.) July 27, 1970]**

**[Singapore — Magistrate's Appeal No. 226 of 1969]**

*Gaming — Betting — Bookmaker — Evidence of expert — Betting Ordinance, 1960, ss. 5(3)(a), 8, 10 and 15.*

The appellant was charged with acting as a bookmaker, an offence under section 5(3)(a) of the Betting Ordinance, 1960, on July 7, 1968 at 5.35 p.m. at the Singapore Turf Club. The prosecution evidence against him disclosed that a detective corporal who kept the appellant under observation on the day in question from 4.55 p.m. and 5.10 p.m. on the ground floor of the said club saw 4 persons approach the appellant one after the other, whisper to him and then leave. After all 4 had left the appellant wrote something in his official race programme. He then approached another person and after whispering to him he went back to his original place. Subsequently 6 other persons similarly approached him one after the other, whispered to him and then left. After all the 6 had left the appellant again wrote something in his race programme and then approached another person, whispered to him and then returned to his original place. After race No. 7 had been run the appellant again wrote something in his race programme. The detective then identified himself and arrested him as a suspected bookmaker and seized the race programme book and a ball point pen from him. According to the detective, he never saw the appellant going to the totalisator to buy tickets. A sum of $2,370 was found on the appellant at the time of his arrest.

**Held,** allowing the appeal: (1) in this case there were a number of inaccuracies in the expert's evidence as to make it unsafe to call upon the appellant for his defence and the appellant should have been acquitted at the end of the prosecution case;

(2) the fact that a sum of $2,370 was found on him was of little assistance in the absence of any adverse evidence as to how he came by this sum of money, as in this case the appellant was a businessman with an income of $3,000 per month and there was nothing sinister in his carrying this large sum on him at the Turf Club.

Observations on mode of giving expert evidence.

MAGISTRATE'S CRIMINAL APPEAL

*Syed Hassan Almenoar* for the appellant.

*Isaac Paul Ratnam* (Deputy Public Prosecutor) for the respondent.

**Winslow J.:** The appellant was charged before the eighth magistrate's court with acting as a bookmaker, an offence under section 5(3)(a) of the Betting Ordinance No. 30 of 1960, on 7th July, 1968 at 5.35 p.m. at the Singapore Turf Club.

The principal evidence against him was that of the detective corporal who kept him under observation from 4.55 p.m. until 5.10 p.m. on the ground floor of the Turf Club building facing the race course and who saw four male Chinese approach the appellant one

after the other, whisper to him and then leave. After all four had left the appellant wrote something in his official race programme. He then approached another male Chinese. After whispering to him he went back to his original place. Subsequently six other male Chinese similarly approached the appellant one after the other, whispered to him and then left. After all the six had left the appellant again wrote something in his race programme and then approached another male Chinese, whispered to him and then returned to his original place.

After Race No. 7 had been run the appellant again wrote something in his race programme. The detective corporal then identified himself and arrested him as a suspected bookmaker and seized the race programme book and a ball point pen from him. According to this witness, he never saw the appellant going to the totalisator to buy tickets. A sum of $2,370 was found on the appellant at the time of his arrest. It should be noted that although this witness said that the arrest took place at 5.10 p.m. after Race No. 7 had been run the charge alleges that he had been acting as a bookmaker at 5.35 p.m., which is more or less after the end of Race No. 7. An entry made by the appellant supports this where he had entered the numbers of the first three horses in Race No. 7. The race programme shows the start of the race as 5.25 p.m.

I now turn to the racing programme which was seized from him after his arrest and the evidence of the "expert" who examined it, senior inspector Lee Kim Siong, who has had 3½ years experience in the Gambling Suppression Branch, C.I.D. and had made a study of bookmaking in code. In view of the presumptions arising under sections 8 and 15 of the Ordinance and the evidence relating to persons whispering to him etc. before Race No. 7 the magistrate called upon him for his defence.

Section 15 provides that the evidence of a police officer not below the rank of sergeant that any book, account, document etc. had been used or was intended to be used for betting shall until the contrary is proved be deemed to be sufficient evidence of the fact.

Section 8 provides that any person found in possession of any such book, account, or document which is used in connection with the business of bookmaking shall be presumed until the contrary is proved to be acting as a bookmaker.

For the purposes of this case, it was most essential that the evidence of senior inspector Lee Kim Siong should have been scrutinised with care. In his examination-in-chief he said that there were a number of strokes against certain horses in Race Nos. 2, 3. 4, 5, 6 and 7 and that except for two horses all the marks were in the weight column whereas in the case of the two horses the strokes were entered against the Chinese names of the horses. There were a total of 23 strokes in all of varying lengths, some of which were little more than dots. Some of these were entered up against the age column. The expert had said nothing about these. The witness further said that the entries were consistent with entries of record of bets in code. He also said that the key to the code was known only to the author and he was unable to say how many bets were recorded that day. In cross-examination he agreed that punters also have their own codes but that the entries in the programme could not be made by a punter because they were too elaborate. He said that certain circles around the number of horses were innocent and in no way incriminating. He was positive that the circles were not records of bets. His explanation of these was to the effect that the circles were too far apart from the groups of strokes both long and short. An examination of the programme reveals that he was clearly wrong in saying that the circles were too far apart from the strokes because on Race No. 6 horse No. 13 there is a circle around No. 13 and there is a stroke and a dot just below the name of the jockey riding that horse and just above the Chinese name of horse No. 14.

I make these observations as to inaccuracies on the part of the expert because, even if it can be said that there was sufficient evidence against the appellant on the evidence of this expert for the magistrate to call upon the appellant for his defence, these inaccuracies should at least have been borne in mind when considering the appellant's defence. Furthermore, in answer to the court, this witness reiterated that except for marks against Race No. 4 horse No. 2 and Race No. 6 horse No. 14 all the marks were in the weight column whereas as I have already pointed out there are marks against Race No. 7 horse No. 2 and Race No. 7 horse No. 7 which are not in the weight column but in the age column. It would be interesting to know what the expert would have said if he had been questioned about these marks. Furthermore, he made the following illuminating observation when questioned about why the marks were placed in the weight column and in the case of the other two horses against their Chinese names. "In a document like P2 race number and horse number are already printed. The bookmaker or his agent needs only to record his bet. This he does against the horse number."

If this statement is to be accepted it makes nonsense of the rest of his evidence because there is no bet which had been recorded against the number of any horse.

In these circumstances it was most unsafe to call upon the appellant for his defence and the appellant should have been acquitted at the end of the prosecution case, especially in view of the fact that he was arrested not at 5.10 p.m. as the detective corporal said but after the end of Race No. 7 *i.e.* around 5.35 p.m. as the charge states. If the detective corporal had been keeping him under observation from 4.55 to 5.10 p.m. then, in the light of his evidence that he never saw the appellant going to the totalisator, it is difficult to be sure whether he kept the appellant under observation between 5.10 p.m. and the start of Race No. 7 at 5.25 p.m. during which period the appellant had every opportunity of going to the totalisator.

Even assuming, despite these inaccuracies in the expert's evidence, that there was sufficient evidence to provoke the presumption under section 15, I do not consider that the explanation given by the appellant

as to why he placed the marks of tips he received against the weight column was in itself so contradictory as to justify the conclusion that he had not discharged, on a balance of probabilities, the burden of showing that these were not records of bets by a book-maker but a record of tips received for his own consideration. The learned magistrate remarked that the appellant first said that he had no particular reason for putting the marks against the weight column and later on its being pointed out that this was rather odd as a normal person would tick against the name or number of the horse and not against the weight column, he replied "This is a game which depends on individuals. We have to consider the number of horse, name of horse, weight the horse is carrying, the jockey's name and the barrier position the horse has drawn and also the breed of the horse and the condition of the track." The magistrate concluded that this explanation was unacceptable because of his earlier answer that there was no reason.

The most that can be said about the appellant from the evidence is that there was a strong suspicion, at the most, that he might have been a bookmaker's agent but as I have said, there were certain markings against the age column and other inaccuracies which have never been considered either by the expert or by the magistrate. The mere fact that a sum of $2,370 was found on him is of little assistance in the absence of any adverse evidence as to how he came by this sum of money. The appellant is a businessman with an income of $3,000 per month and there was nothing sinister in his carrying this large sum on him at the Turf Club.

I am far from saying that the evidence of the senior inspector, whose evidence in other cases has been accepted and acted upon, should never in future be accepted. Each case depends on its own facts. It is unfortunate that in this particular case he was unable to decipher the code in question which could well have been that of an innocent punter. Further, when giving evidence about persons like the appellant about whom he was positive that he was acting as a bookmaker or bookmaker's agent, he should express himself more forcibly as, for example, in terms such as "I am positive that these are records of betting by a bookmaker or his agent" giving satisfactory reasons for being sure, and not as he said in his examination-in-chief, "These records are consistent with his being a bookmaker or bookmaker's agent". Consistency can work either way. Marks can also be consistent with innocence. In future cases, this officer should avoid the use of such an expression, where he is sure as otherwise he is bound to give rise to doubts about his own evidence.

For all these reasons, taking the evidence as a whole it cannot be said that a satisfactory case had been made out against the appellant and he should have been acquitted if not at the end of the prosecution case at least after hearing him. There was more than room for doubt.

The appeal is accordingly allowed, the conviction quashed and the sentence of a fine of $750 or in default 3 months' imprisonment set aside. If the fine has been paid it should be refunded.

*Appeal allowed.*

Solicitors: *Chor Pee & Hin Hiong.*